



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

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Contact: Maria Velasquez, Communications Director (619) 235-5725 mvelasquez@sandiego.gov

102 CITY RETIREES RECEIVED \$8 MILLION IN “EXCESS” PENSION BENEFITS, SOME EARNING MORE THAN \$500 THOUSAND

San Diego Retirement Officials Admit Internal Revenue Code Violated

San Diego, CA—Internal records of the San Diego City Employees’ Pension System (SDCERS), released today by the City Attorney’s Office, show that officials at SDCERS paid \$8 million in “excess” pension benefits to 102 City retirees between 2001 and 2007, in violation of Internal Revenue Code limits.

According to Aguirre, while SDCERS was trying to quietly rectify the violations with the IRS, the information was not provided to Macias Gini, SDCERS’ own auditor, who just recently completed the City’s 2005 financial statement. In addition, the information was not provided to the U.S. Securities and Exchange Commission, the United States Attorney’s Office, the City Attorney’s Office, Navigant Consulting, outside auditor KPMG, or Kroll Inc., all of whom conducted investigations into the City’s pension and financial disclosure practices.

“The pension system has become a ‘ponzi scheme’ that gobbles up scarce tax dollars needed for important public projects,” said City Attorney Michael Aguirre. “Taxpayers should not have to pay for these gross pension benefits without a vote of the people.”

On August 22, 2007, SDCERS’ tax counsel, Ice Miller LLP, advised IRS officials that “102 participants have at some point in their retirement exceeded the 415 limit.” The Ice Miller firm put the “total excess benefits” at \$8,160,027.

The tax qualified status of the City’s pension plan, that allows pension funds and investment returns to grow untaxed, can be lost if pension officials pay pension benefits above those allowed by Internal Revenue Code § 415. Ice Miller attorneys have advised SDCERS officials that retaining “qualified” status is needed so that City employees do not have to pay taxes on contributions and investment returns earned by the pension fund.

“If even one member is paid an annual benefit greater than Code Section 415 allows”, SDCERS Ice Miller has advised, “theoretically, the entire plan will be disqualified.” Loss of the tax qualification would cost City taxpayers and pension participants hundreds of millions of dollars.

(MORE)

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1200 Third Avenue, Suite 1620, San Diego, California 92101-4188 (619) 236-6220

In March 2001, the City Council created an additional pension program called the “Preservation of Benefit Plan” (POB) which was designed to pay the excess benefits from the City’s General Fund—the same fund that’s used to pay for City services such as public safety salaries, street maintenance, libraries and parks. However, the City only began to budget for POB payments in FY 2008.

The San Diego City Attorney has obtained the names of 29 of the 102 plan participants from SDCERS who received excess benefits. Included in the excess benefits group are former City Attorney Casey Gwinn (\$213,000 in excess benefits between 2005 and 2007), former Deputy City Manager Bruce Herring, and former Assistant Police Chief Keith Enerson.

In addition to their regular annual retirement payment, one unidentified City retiree has received over \$800,000 in excess pension benefits over a 7-year period.

According to Aguirre, Gwinn, Herring and Enerson were key players in the pension debacle. The City Attorney’s office under Gwinn was in charge of providing legal advice on pension issues, while Herring, a former member of the SDCERS Board, helped to negotiate the increase in pension benefits for reduced City contributions deals in 1996 and 2002 that led to a U.S. Securities and Exchange Commission fraud action against the City and criminal charges being filed by the U.S. Attorney’s Office and District Attorney’s Office against several former pension officials. Enerson was one of three architects of Managers Proposal 1--the increased benefits for reduced contributions agreement that started the pension crisis.

The City Attorney is calling upon City Council President Scott Peters to schedule an immediate hearing of the City Council to stop the payment of “excess” pension benefits. Aguirre also renewed his call for Council Member Peters to set Council hearings on the outstanding issues related to abuses of the purchase of Pension Service Credit and DROP programs.

In addition, Aguirre is requesting that Macias Gini conduct an analysis to 1) determine whether the Preservation of Benefits Plan was properly established by the City in 2001, 2) determine whether SDCERS’ funding of excess benefits from pension system’s assets could disqualify SDCERS as a “qualified plan” within the meaning of Internal Revenue Code, and 3) amend the City’s FY 05 financial statement to include related disclosures regarding the payment of excess benefits.

The City Attorney is also recommending a Charter Amendment measure be placed on the June 2008 ballot to change the make-up of the SDCERS Board so that it is comprised of 7 independent members who have no financial interest in the City’s pension system. This was advocated in 2003 by the City’s Pension Reform Commission.

To view the documents released today by the City Attorney, visit www.sandiegocityattorney.org, click “Significant Reports & Legal Documents.

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